

RBS and RUS, USDA

§4279.181

lender and applicant may propose alternate conditions. Within the requirements of the applicable regulations and instructions and prudent lending practices, the Agency may negotiate with the lender and the applicant regarding any proposed changes to the Conditional Commitment.

§ 4279.174 Transfer of lenders.

(a) The loan approval official may approve the substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment when the Loan Note Guarantee has not yet been issued provided, that there are no changes in the borrower's ownership or control, loan purposes, or scope of project and loan conditions in the Conditional Commitment and the Loan Agreement remain the same.

(b) The new lender's servicing capability, eligibility, and experience will be analyzed by the Agency prior to approval of the substitution. The original lender will provide the Agency with a letter stating the reasons it no longer desires to be a lender for the project. The substituted lender must execute a new part B of Form 4279-1.

§ 4279.175 Domestic lamb industry adjustment assistance program set aside.

A 3-year set aside of B&I Guaranteed Loan Program funds has been established in the National Office to fund loans to lamb processors for real estate purchases and improvements; working capital; debt refinancing; and upgrading, replacing, and installing new processing and packaging equipment for domestic lamb packing and processing plants. The set aside is \$15 million for FY 2001, \$5 million for FY 2002, and \$5 million for FY 2003. These funds will be available through the third quarter of each respective year and, if not used, will revert for use in the general program.

[65 FR 64597, Oct. 30, 2000]

§§ 4279.176–4279.179 [Reserved]

§ 4279.180 Changes in borrower.

Any changes in borrower ownership or organization prior to the issuance of the Loan Note Guarantee must meet

the eligibility requirements of the program and be approved by the Agency loan approval official.

§ 4279.181 Conditions precedent to issuance of Loan Note Guarantee.

The Loan Note Guarantee will not be issued until the lender, including a CLP lender, certifies to the following:

(a) No major changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment, unless such changes have been approved by the Agency.

(b) All planned property acquisition has been or will be completed, all development has been or will be substantially completed in accordance with plans and specifications, conforms with applicable Federal, state, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.

(c) Required hazard, flood, liability, worker compensation, and personal life insurance, when required, are in effect.

(d) Truth-in-lending requirements have been met.

(e) All equal credit opportunity requirements have been met.

(f) The loan has been properly closed, and the required security instruments have been obtained or will be obtained on any acquired property that cannot be covered initially under State law.

(g) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and to any other exceptions approved in writing by the Agency.

(h) When required, the entire amount of the loan for working capital has been disbursed except in cases where the Agency has approved disbursement over an extended period of time.

(i) When required, personal, partnership, or corporate guarantees have been obtained.

(j) All other requirements of the Conditional Commitment have been met.

(k) Lien priorities are consistent with the requirements of the Conditional Commitment. No claims or liens of laborers, subcontractors, suppliers of machinery and equipment, or other parties have been or will be filed against the collateral and no suits are

pending or threatened that would adversely affect the collateral when the security instruments are filed.

(l) The loan proceeds have been or will be disbursed for purposes and in amounts consistent with the Conditional Commitment and Form 4279-1. A copy of the detailed loan settlement of the lender must be attached to support this certification.

(m) There has been neither any material adverse change in the borrower's financial condition nor any other material adverse change in the borrower, for any reason, during the period of time from the Agency's issuance of the Conditional Commitment to issuance of the Loan Note Guarantee regardless of the cause or causes of the change and whether or not the change or causes of the change were within the lender's or borrower's control. The lender must address any assumptions or reservations in the requirement and must address all adverse changes of the borrower, any parent, affiliate, or subsidiary of the borrower, and guarantors.

(n) None of the lender's officers, directors, stockholders, or other owners (except stockholders in an institution that has normal stockshare requirements for participation) has a substantial financial interest in the borrower and neither the borrower nor its officers, directors, stockholders, or other owners has a substantial financial interest in the lender. If the borrower is a member of the board of directors or an officer of a Farm Credit System (FCS) institution that is the lender, the lender will certify that an FCS institution on the next highest level will independently process the loan request and act as the lender's agent in servicing the account.

(o) The Loan Agreement includes all measures identified in the Agency's environmental impact analysis for this proposal (measures with which the borrower must comply) for the purpose of avoiding or reducing adverse environmental impacts of the proposal's construction or operation.

§§ 4279.182–4279.185 [Reserved]

§ 4279.186 Issuance of the guarantee.

(a) When loan closing plans are established, the lender will notify the Agency. Coincident with, or immediately after loan closing, the lender will provide the following to the Agency:

(1) Lender's certifications as required by § 4279.181.

(2) Executed Lender's Agreement.

(3) Form FmHA 1980-19, "Guaranteed Loan Closing Report," and appropriate guarantee fee.

(b) When the Agency is satisfied that all conditions for the guarantee have been met, the Loan Note Guarantee and the following documents, as appropriate, will be issued:

(1) *Assignment Guarantee Agreement*. In the event the lender uses the single note option and assigns the guaranteed portion of the loan to a holder, the lender, holder, and the Agency will execute the Assignment Guarantee Agreement; and

(2) *Certificate of Incumbency*. If requested by the lender, the Agency will provide the lender with a certification on Form 4279-7, "Certificate of Incumbency and Signature (Business and Industry)," of the signature and title of the Agency official who signs the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement.

(c) The Agency may, at its discretion, request copies of loan documents for its file.

(d) There may be instances when not all of the working capital has been disbursed, and it appears practical to disburse the balance over a period of time. The State Director, after review of a disbursement plan, may amend the Conditional Commitment in accordance with the disbursement plan and issue the guarantee.

§ 4279.187 Refusal to execute Loan Note Guarantee.

If the Agency determines that it cannot execute the Loan Note Guarantee, the Agency will promptly inform the lender of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender requests additional time in writing and within the period allowed, the Agency may grant the request. If the lender